*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

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+ WRIT PETITION NO.9504 OF 1994

% 12.07.2005

Mr.Ch.Vijaya Raju, S/o Sri Ch.Barna Bas, 32 yeas, Ex-Employee, R/o Sanjamala, Kurnool District.

.....Petitioner

Vs.

$ 1. Superintendent Engineer (Operation), APSEB, Kurnool.

2. Chief Engineer (Operation), SouthZone, APSEB, Cudapah.

3. Chairman, APSEB, Vidyuth Soudha, Khairatabad, Hyderabad.

.....Respondents

! Counsel for the petitioner: V.Krishna Mohan

^ Counsel for the Respondent: Samineni Kishore

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? Cases referred

1. 1995(3) ALD 768

2. 1999(5) SCC 762: para 11

3. 2003(4) SCC 583: para 16

4. AIR 2004 SC 4271: para 7

5. AIR 1968 SC 236: para 9

6. AIR 1968 SC 266: para 19

7. 1999(7) SCC 332: para 8

8. 2003(4) SCC 331: para 6

9. 2003(3) SCC 605: para 10

10.AIR 1963 SC 779

11.AIR 1969 SC 966: para 8

12. AIR 1996 SC 1561: para 7

13. 1996(3) ALD 719 (DB): para 37

14. 2003(3) ALD 663: para 30

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 9504 of 1994

Between:

MR.Ch.Vijaya Raju, S/O Sri.Ch.Barna bas, Aged about 32years, Occ: Ex-Employee, R/O Sanjamala, Kurnool District.

..... PETITIONER

AND

1. Superintendent Engineer (Operation) APSEB, Kurnool.
2. Chief Engineer (Operation) South Zone, APSEB, Cuddapah.
3. Chairman, APSEB, Vidyuth Southa, Khairatabad, Hyderabad.

(Respondents 1 and 3 dismissed for default vide order dated 11.8.1999)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more particularly a Writ in the nature of Writ of Certiorari quashing the order in Memo NO. CEE/C2/CDP/112-1/F.Disc.K./D.No.2129/93, dated 9.7..1993 by calling for the records in Memo.No.PO/AD/C1/2279/92, dated 18.11.1992 and Memo No.CEE/C2/CDP/112-1/P.Disc.K/D.No.2129/93, dated 9.7.1993 in the office of 1st and 2nd respondents respectively and consequentially declare the proceedings therein as arbitrary, illegal and null and void and unconstitutional and direct the respondents to take the petitioner in service.

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondents: MR.SAMINENI KISHORE, S.C. FOR APSEB

The Court made the following :

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.9504 OF 1994

ORDER:

The order of the 2nd respondent-Appellate Authority, dated 09.07.1993 confirming the order of the 1st respondent-disciplinary authority dated 18.11.1992, whereby the petitioner was imposed the punishment of dismissal from service, is the subject matter of challenge in this writ petition.

Brief facts, relevant for the purpose of this writ petition, are that the petitioner was appointed on compassionate grounds in the A.P. State Electricity Board in the year 1981. He was posted as Revenue Cashier in the Electricity revenue office of the A.P.S.E.B. at Yemmiganur in 1990. It is his case that his job involved collection of bill amounts from customers at Yemmiganur and nearby villages covered by the Electricity Revenue Office and to remit the amounts, so collected, to the Electricity Revenue Office of the APSEB. It is stated in the affidavit, filed in support of the writ

petition, that as part of his duty of collecting the bill amounts from different customers the petitioner, some times, had to accept short amounts from persons who were otherwise prompt payers though receipts for the total bill amounts were issued. It is his case that this was done in good faith on the assurance that the balance amounts would be paid without delay. Initial short payment by customers and delay in payment by them of the remaining bill amounts resulted in belated remittances being made to the APSEB. It is his case that during the period December, 1990 to February 1991 certain consumers had paid amounts in short and had also given soiled notes which could not be deposited with the APSEB, resulting in belated remittance, of the total amount due, only on 16.03.1991.

The petitioner was placed under suspension and an enquiry was ordered with the Divisional Engineer as the Enquiry Officer. The Enquiry Officer conducted the enquiry and, without examining witnesses on behalf of the management and without giving an opportunity to the petitioner to adduce evidence in his defence, held the charges are proved. On the basis of the Enquiry report, the Superintending Engineer-the 1st respondent dismissed the petitioner from service vide proceedings No.P.O/AD/C1/2279/92, dated 18.11.1992 and the appeal preferred by the petitioner to the 2nd respondent was also dismissed vide proceedings No. CEE/CZ/CDP/112-1/F.Disc.K/D.No.2129/93, dated 09.07.1993. The representation submitted by the petitioner on 02.09.1993 to the 3rd respondent was not considered vide memo dated 15.11.1993, a copy of which is said to have been received by the petitioner on 24.12.1993.

Learned Counsel for the petitioner Sri V.Srinivas, contends that the Enquiry proceedings were conducted in gross violation of principles of natural justice, that no oral evidence was adduced in support of the charges, that the punishment of dismissal is grossly disproportionate to the charges held proved, and since the entire short fall amount was remitted on 16.03.1991, much prior to initiation of disciplinary proceedings, the charge of defalcation of money held proved by the enquiry officer was based on no evidence and the findings in this regard perverse. Learned Counsel further contends that short collection and remittance of amount soon thereafter does not amount to defalcation of money, that the Enquiry Report holding the charges as proved is based on surmises and assumptions, that the

Enquiry Officer was biased and had acted with predetermined mind, and that the order of punishment was passed mechanically without assigning valid reasons.

Though no counter affidavit was filed on behalf of the respondents, the learned Standing Counsel for the Respondent Sri Samineni Kishore sought to justify the order of punishment imposed by the 1st respondent based on the Enquiry Report, and the appellate order passed by the 2nd respondent. Learned Standing Counsel submits that since the documentary evidence on record, which the petitioner had perused and accepted, and the factual allegations made in support of the charges were not in dispute, there was no need to examine witnesses orally and that the petitioner while admitting short remittance of bill amounts had merely sought to justify the same. Since receipts were issued to customers for the total bill amount while remitting lesser amounts, it was a clear case of defalcation of amounts due to the APSEB and the mere fact that the said amounts were remitted soon thereafter does not change the nature of misconduct of defalcation. Learned Counsel submits that since the disciplinary authority and the appellate authority had agreed with the findings of the Enquiry Officer, which are based on the evidence on record, the order imposing punishment and the order rejecting the appeal need not be a detailed order and the reasons given in the orders passed both by the 1st and 2nd respondents reveal proper application of mind. Learned Counsel submits that since it is a case of defalcation, whatever may be the amount involved, the only punishment which could have been imposed was that of dismissal from service and it cannot be said that the punishment imposed on the petitioner is grossly disproportionate to the misconduct held proved.

A perusal of the charge sheet reveals that seven charges were alleged against the petitioner. The 1st Charge was that the petitioner, as a Revenue Cashier, had collected Rs.11,485/- towards C.C. charges from consumers on various occasions but had remitted only Rs.4,604/- and had defalcated Rs.6,881/-. Eighteen statements were enclosed in support of Charge No.1, from which it is clear that amounts were remitted in short during the period 08.12.1990 to 11.03.1991. The 2nd Charge was that the petitioner had remitted certain amounts belatedly with the delay ranging from three days to thirteen days. The 3rd charge is that the petitioner had entered fictitious numbers in certain payment receipts and had kept the BCRC numbers blank in some payment receipts only to make inspection and checking of

documents difficult. The Eighteen statements referred to in respect of charge No.1 were referred to in support of this Charge also. The 4th charge was that the petitioner had written the first three digits of the BCRCs in respect of payment receipts, whereas either the complete number or the last three digits must have been entered. The 5th charge was that the entries in column 'Slab amount' and 'Total amount' against five items were found incorrect and the amounts were less than the collected amount as per the corresponding PRs. The 6th charge was that the petitioner had issued two PRs with subsequent numbers with an earlier date while four earlier PRs were shown to have been issued on a subsequent date. The 7th charge was that the petitioner had been punished earlier for tampering with the BCRC dated 21.11.1990.

The Enquiry Officer in his report recorded the fact that no prosecution witness was examined nor had the delinquent employee cross-examined them, that the charge sheet was read out and all the records mentioned in the Charge sheet, including the corrections reported to have been made by the delinquent, were shown to him and that the delinquent had acknowledged them as correct.

Before the Enquiry Officer, in respect of charge No.1, the petitioner submitted that he had prepared the payment receipts believing that the customers had brought the full amounts. The customers paid less amounts and promised to pay the balance by evening. However, none of them paid the balance and consequently short amounts collected were only remitted. He also contended that soiled notes were presented to him, which could not be remitted and that it was a case of short remittance and not of defalcation.

With respect to charge No.2, the petitioner contended that this charge formed part of and had its origin from Charge No.1 and therefore was not justified. In respect of charge No.3, the petitioner submitted that due to pressure of work he had either noted the BCRC numbers incorrectly or left the BCRCs blank in the PRs and that it must have been a clerical error for which he regretted. In respect of charge No.4, the petitioner submitted that his noting the first three digits was not such a great lapse as to constitute misconduct when the PRs were noted in the BCRCs. In respect of charge No.5, the petitioner contended that if corrections were made in certain items the totals also should have been corrected and inasmuch as the Charge sheet does

not state that the totals were corrected, it was possible that corrections in certain items were made subsequently. With respect to charge No.6 the petitioner contended that the charge was not clear, that he did not remember how it happened, that it was possible that the PRs must have turned over from the running page and that when PR numbers were given in BCRCs there could not be any misconduct. In respect of charge No.7, the petitioner contended that past conduct could not form the basis to level an allegation.

In respect of charges 5 and 6 the petitioner had either denied the charges or had contended that the charges were vague and obscure. In respect of charge No.7, he contended that the past conduct could not form the basis of leveling an allegation. Even in respect of charge NO.2, the petitioner contended that it formed part of charge No.1. As such the allegations either admitted or not disputed by the petitioner were only those in respect of charges 1, 3 and 4. While admitting/ not disputing the allegations, in respect of these three charges, the petitioner, sought to justify his action in committing the acts alleged to have been committed by him.

The Enquiry Officer held charges 1 to 6 as proved and dropped charge No.7. In respect of charge No.1, the Enquiry Officer held that the system was that the revenue clerk should first take money from the customers, count it and then only issue payment receipts and if any soiled notes were there, the petitioner could have returned it and requested the customer to tender good currency notes. Further, soiled notes were being accepted in banks. Issuing P.Rs taking less amount could be once but not repeatedly. The Enquiry Officer disbelieved the explanation of the delinquent and held that the allegation of defalcation of Rs.6,881/- was proved. While dealing with the contention of the petitioner that he had remitted the entire amount on 16.03.1991, the Enquiry Officer held that this act of making good the amount to the Board may absolve the petitioner of criminal proceedings, but disciplinary action would remain.

In respect of charge No.2, the Enquiry Officer held that it was not part of charge No.1, while charge No.1 related to short collection from customers and issue of payment receipts for full amounts while accepting lesser amounts from consumers, the 2nd charge related to non-payment of even the short amount collected to the Board's account immediately. While the 1st charge dealt with defalcation, the 2nd charge related to delay in remittance of the amount collected,

though in short, and that charge No.2 was also proved.

In respect of charge No.3, the Enquiry Officer held that the contention that the petitioner had entered correct payment receipt numbers in the respective BCRCs had no relevance inasmuch as he did not enter the correct BCRCs numbers in the payment receipts which were required to locate the corresponding BCRCs. The Enquiry Officer held that the petitioner had entered fictitious BCRC numbers and kept some BCRC numbers blank in the PRs, only to make inspection and checking of the records difficult with malafide intention and hence the charge was proved. In respect of charge No.4, the Enquiry Officer held that the purpose of entries in the BCRCs numbers in the PR, and writing the first three digits instead of either the whole number or the last three digits, defeated the purpose, which clearly constituted negligence of duty and hence the charge was proved. In respect of charge No.5 relating to correction of entries, the Enquiry Officer disbelieved the contention that they could have been subsequently entered. The Enquiry Officer held that eleven corrections were made first and then the totals were made. The Enquiry Officer held that the action of the petitioner in contending that corrections were made subsequently was grave and reprehensible. With respect to charge No.6, the Enquiry Officer disbelieved the version of the petitioner that PR books must have turned over and held that the petitioner could have cancelled those PRs instead of using them subsequently on 04.02.1991. Referring to the fact that the allegations in respect of charge Nos.1 to 5 were proved, the Enquiry Officer held that he was prone to believe that the petitioner had intentionally kept the six PRs blank and issued them subsequently on 4.2.1991 with malafide intention. The Enquiry Officer concluded holding that the purpose of awarding any punishment is to refine a person so that he would not commit those mistakes again and thereby proving himself useful to the society at large, that it was a sorry state of affairs that though the petitioner was punished earlier for tampering the BCRC there was no change in his attitude and he continued to commit grave mistakes.

As referred to supra, the petitioner had either admitted/not disputed the facts alleged in respect of charges 1, 3 and 4 while denying or not admitting charge Nos: 2,5 and 6. Even in respect of the allegations admitted by him in respect of charges 1,3 and 4, the petitioner had sought to justify his action while not disputing the incidents referred to in the said charges.

Sri V.Srinivas, learned Counsel for the petitioner, relies on the judgment in

NAGARJUNA GRAMEENA BANK VS. M.P.BRUCE wherein the Division Bench of this Court held that imposition of punishment, without holding a proper enquiry and without affording reasonable opportunity to the employee to meet the charges framed against him was unfair, bad in law, illegal, arbitrary and violative of Article 14 of the Constitution of India. Learned Counsel contends that despite the petitioner's specific request no oral enquiry was held, no witnesses examined in support of the charge nor was the petitioner afforded an opportunity of examining witnesses in his defence.

It is well settled that no person can be imposed a major penalty without being issued a charge sheet specifying the charges and calling for his explanation in reply thereto thereto. In case the charges are denied by the delinquent, an oral enquiry is to be held wherein witnesses are required to be examined in support of the charges, the delinquent employee given an opportunity to cross-examine such witnesses and permitted to examine witnesses in his defense. On completion of examination of all witnesses, the delinquent is required to be given an opportunity of making his submissions in respect of the evidence adduced in the enquiry. On receipt of the Enquiry Officer's report a copy thereof is required to be furnished, permitting the delinquent to submit a representation thereto. It is only thereafter that the disciplinary authority, after considering the entire evidence on record, the Enquiry report and the representation of petitioner, is entitled to impose punishment in case he comes to the conclusion that the charges levelled against the delinquent are proved.

Where the delinquent employee denies the charge, the burden is on the management to let in evidence in support of the charges in a properly conducted departmental enquiry. In respect of charges 2, 5 and 6, since the petitioner had not admitted the charge or had contended the charge as vague or obscure, it was mandatory for the employer to have adduced evidence, both oral and documentary, in support of charges 2, 5 and 6 before the Enquiry Officer. Since the Enquiry Officer, merely on the basis of the allegations made in the charge sheet and the documents referred to therein, had held the charges as proved, the findings in respect of charges 2, 5 and 6, are in violation of principles of natural justice and are liable to be set aside.

Since charge No. 7 was dropped, charges 1,3 and 4 alone remain for consideration.

The incidents referred to in charges 1,3 and 4 are admitted and not disputed by the petitioner who only sought to justify his action in respect of the said charges. Failure to examine witnesses in support of these three charges is not fatal, since it is settled law that admitted or undisputed facts need not be proved, more so since strict rules of the Evidence Act are not applicable to departmental enquiry proceedings (See: **BANK OF INDIA VS. DEGALA SURYANARAYANA; LALIT POPLI VS. CANARA BANK**)

It is settled position in law that admission is the best piece of evidence against the person making the admission (**DELHI TRANSPORT CORPORATION v SHYAMLAL**). The principle that in a domestic enquiry, before a delinquent is asked all the evidence against him must be led, cannot be an invariable rule in all cases. The situation would different where the accusation is based on a matter of record or the facts are admitted. In such a case it would be permissible to draw the attention of the delinquent to the evidence on record which goes against him and which, if he cannot satisfactorily explain, must lead to a conclusion of guilt. (**EMPLOYER OF FIRESTONE TYRE CO. LTD., VS. WORKMEN**). If the workman admits his guilt, to insist upon the management to let in evidence about such allegations will only be an empty formality. In such a case it will be open to examine the workman himself, even in the first instance, so far as to enable him to offer any explanation for his conduct as to place before the management any circumstances which will go to mitigate the gravity of the offence (**CENTRAL BANK OF INDIA VS.KARANMOOY BANERJEE**). In a case where the facts are almost admitted, the case reveals itself and is apparent on the face of the record and in spite of an opportunity no worthwhile explanation is forthcoming, it would not be a fit case to interfere with the order of punishment (**D.M.R.B. ARCOT RAMASWAMY MUDALIAR EDUCATIONAL INSTITUTION VS. EDUCATIONAL APPELLATE TRIBUNAL**)

Even if charges 2, 5 and 6 are eschewed, it cannot be said that the punishment imposed on the petitioner of dismissal from service with regard to charges 1, 3 and 4 was not warranted or that it is grossly disproportionate to the charges held proved. Where an employee deals with public money or he engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and is unexceptionable. (**DIRECTOR GENERAL RPF VS. SAIBABU; REGIONAL MANAGER UPSRTC VS.HOTILAL**).

The contention that short collection and remittence of the amount soon thereafter, does not amount to defalcation of money, cannot be accepted. Black's Law Dictionery defines 'defalcation' to mean:

"The act of a defaulter, act of embezzling, failure to meet an obligation misappropriation of trust funds or money held in any fiduciary capacity, failure to properly account for such funds. Commonly spoken of officers of corporations or public officials"

Since failure to properly account for funds or money held in a fiduciary capacity would also comes within the definition of defalcation and since admittedly, the petitioner herein, had failed to make payments of the amounts due to the Board within the stipulated time, it cannot be said that the charge of defalcation has not been proved.

For charges 1, 3 and 4 relating to short collection, short remittance or tampering with entries etc., punishment of dismissal from service can undoubtedly be imposed, even though charges 2, 5 and 6 are held, in view of violation of principles of natural justice, as not having been proved. Even if one charge, among others, is established and that charge is substantial warranting imposition of punishment it is not for Courts to consider whether that charge alone would have weighed with the authority in imposing the punishment in question. (**STATE OF ORISSA VS. BIDYABHUSHAN MOHAPATRA; RAILWAY BOARD VS. NIRANJAN SINGH; STATE OF U.P. V. NANDAKISHORE SHUKLA; Y.RAJESWARI VS. DISTRICT JUDGE, NELLORE**).

There is however another aspect, which requires consideration. Both in his reply to the show-cause notice dated 01.04.1992 and in his appeal filed against the order passed by the 1st respondent, the petitioner, had stated that he had remitted in full by 16.03.1991 itself every paisa short collected by him i.e., the entire sum of Rs.6,881/-. While the Enquiry Officer was appointed and a charge memo was issued to the petitioner on 10.09.1991, the entire amount remitted by the petitioner on 16.03.1991, was much prior to initiation of disciplinary proceedings against him.

Seriousness of the misconduct has also to be viewed from the factum of repaying the entire amount much prior to initiation of disciplinary proceedings and the reasons and circumstances stated by the petitioner, for non-payment of the amount earlier.

(**M.NIZAMUDDIN VS. G.M. AND APPELLATE AUTHORITY, BANK OF INDIA**).

Since the amount remitted by the petitioner, representing the entire amount of short collection, on his own accord was much prior to initiation of disciplinary proceedings against him, and as the question regarding its effect on the appropriate punishment to be imposed has not been examined, I consider it appropriate to set aside the order of the appellate authority and direct the 2nd respondent to first re-examine the matter in the light of the fact that the petitioner had, on his own accord, much prior to initiation of the disciplinary proceedings against him, remitted the entire short collection, and thereafter to consider whether the punishment imposed by the 1st petitioner-disciplinary authority requires interference or not.

Needless to state that the order of the 1st respondent-disciplinary authority dated 18.11.1992 will continue to remain in force subject to the decision now required to be taken by the 2nd respondent appellate authority. The 2nd respondent shall consider and pass appropriate orders in this regard within a period of two months from the date of receipt of a copy this order and shall communicate his decision to the petitioner within two weeks thereafter.

The writ petition is accordingly disposed of. No costs.

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.07.2005.

MRKR

To

1. One fair copy to the Hon'ble Sri Justice Ramesh Ranganadhan (for his Lordship's kind perusal)
2. The Superintendent Engineer (Operation) APSEB, Kurnool.
3. The Chief Engineer (Operation) South Zone, APSEB, Cuddapah.
4. The Chairman, APSEB, Vidyuth Southa, Khairatabad, Hyderabad.
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
6. Eight L.R.Copies
7. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.
8. Two C.D.copies.